

*The original of this document contains information which is subject to withholding from disclosure under 5 U.S. C. § 552. Such material has been deleted from this copy and replaced with XXXXXX's.

United States Department of Energy
Office of Hearings and Appeals

In the Matter of: Personnel Security Hearing)
Filing Date: January 29, 2018)
_____)

Case No.: PSH-18-0010

Issued: May 21, 2018

Administrative Judge Decision

Kimberly Jenkins-Chapman, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXX (hereinafter referred to as “the individual”) to hold an access authorization¹ under the Department of Energy’s (DOE) regulations set forth at 10 C.F.R. Part 710, Subpart A, entitled “General Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material.” As discussed below, after carefully considering the record before me in light of the relevant regulations and the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (June 8, 2017) (Adjudicative Guidelines), I conclude that the individual’s access authorization should not be restored.

I. Background

The individual is employed by a DOE contractor in a position that requires him to hold a security clearance. In November 2015, the individual completed a Questionnaire for National Security Positions (QNSP) as part of a security clearance reinvestigation. Ex. 9. Subsequently, the local security office (LSO) held a Personnel Security Interview (PSI) with the individual in June 2017. Ex. 11. In response to information gathered at the PSI, a DOE consulting-psychologist (psychologist) evaluated the individual. Ex. 7.

Because the psychologist's evaluation raised unresolved security concerns, the LSO informed the individual in a Notification Letter dated December 15, 2017 (Notification Letter), that it possessed reliable information that created substantial doubt regarding his eligibility to hold a security clearance. In an attachment to the Notification Letter, the LSO explained that the derogatory information raised security concerns under Guideline E (personal conduct), Guideline G (alcohol consumption) and Guideline I (psychological conditions) of the Adjudicative Guidelines. Ex. 1.

¹ Access authorization is defined as “an administrative determination that an individual is eligible for access to classified matter or is eligible for access to, or control over, special nuclear material.” 10 C.F.R. § 710.5(a). Such authorization will be referred to variously in this Decision as access authorization or security clearance.

Upon receipt of the Notification Letter, the individual exercised his right under the Part 710 regulations by requesting an administrative review hearing. Ex. 2. The Director of the Office of Hearings and Appeals (OHA) appointed me the Administrative Judge in the case, and I subsequently conducted an administrative hearing in the matter. At the hearing, the DOE Counsel submitted 13 numbered exhibits (Exhibits 1-13) into the record and presented the testimony of the DOE psychologist. The individual tendered three exhibits and presented the testimony of eight witnesses, including himself. The exhibits will be cited in this Decision as “Ex.” followed by the appropriate alphabetical or numeric designation. The hearing transcript in the case will be cited as “Tr.” followed by the relevant page number.

II. Regulatory Standard

A DOE administrative review proceeding under Part 710 requires me, as the Administrative Judge, to issue a Decision that reflects my comprehensive, common-sense judgment, made after consideration of all of the relevant evidence, favorable and unfavorable, as to whether the granting or continuation of a person’s access authorization will not endanger the common defense and security and is clearly consistent with the national interest. 10 C.F.R. § 710.7(a). The regulatory standard implies that there is a presumption against granting or restoring a security clearance. *See Department of Navy v. Egan*, 484 U.S. 518, 531 (1988) (“clearly consistent with the national interest” standard for granting security clearances indicates “that security determinations should err, if they must, on the side of denials”); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9th Cir. 1990), cert. denied, 499 U.S. 905 (1991) (strong presumption against the issuance of a security clearance).

The individual must come forward at the hearing with evidence to convince the DOE that granting or restoring access authorization “will not endanger the common defense and security and will be clearly consistent with the national interest.” 10 C.F.R. § 710.27(d). The individual is afforded a full opportunity to present evidence supporting his eligibility for an access authorization. The Part 710 regulations are drafted so as to permit the introduction of a very broad range of evidence at personnel security hearings. Even appropriate hearsay evidence may be admitted. 10 C.F.R. § 710.26(h). Hence, an individual is afforded the utmost latitude in the presentation of evidence to mitigate the security concerns at issue.

III. Notification Letter and Associated Security Concerns

As previously mentioned, the Notification Letter included a statement of derogatory information that raised concerns about the individual’s eligibility for access authorization. The information in the letter specifically cites Guidelines E, G, and I of the Adjudicative Guidelines. Guideline E pertains to security concerns arising from conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules or regulations. Guideline E at ¶ 15. Such conduct can raise questions about an individual’s reliability, trustworthiness, and ability to protect classified or sensitive information. *Id.* Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes. *Id.* As support for its citation of Guideline E, the LSO relied upon the DOE consultant-psychologist’s evaluation of the individual, concluding that laboratory testing showed that the individual was minimizing his alcohol consumption, and “he was not honest about the frequency and/or amounts of alcohol he ha[d] been consuming.” Ex. 1 at 1. Further, the LSO stated that the individual informed the

psychologist, in August of 2017, that he had not consumed alcohol since May 2017; however, laboratory tests indicated that the individual consumed alcohol within three days prior to providing a sample for the test. *Id.*

Guideline G relates to security risks arising from alcohol consumption. Excessive alcohol consumption often leads to the exercise of questionable judgment or the failure to control impulses, and can raise questions about an individual's reliability and trustworthiness. Guideline G at ¶ 21. In citing Guideline G, the LSO stated that it relied upon the September 2017 written evaluation by the DOE psychologist, which stated that the individual met the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5) criteria for Unspecified Alcohol-Related Disorder without adequate evidence of rehabilitation or reformation. Ex. 1 at 2. Further, the LSO cited five alcohol-related incidents, in which the individual was:

1. Cited for Open Container (alcohol) in February 2013;
2. Cited for Assault & Battery and Public Intoxication in March 2008;
3. Arrested and charged with Driving While Intoxicated (DWI) and Reckless Driving in June 2005;
4. Arrested and charged with Aggravated DWI, Resisting, Open Container, and Concealing Identity in October 1995; and
5. Arrested and charged with DWI and No Insurance in April 1994. *Id.*

Guideline I relates to certain emotional, mental and personality conditions that can impair judgment, reliability, or trustworthiness. Guideline I at ¶ 27. An opinion by a duly qualified mental health professional that an individual has a condition that may impair judgment, stability, reliability, or trustworthiness can raise a security concern under Guideline I. *Id.* at ¶ 28(b). With respect to Guideline I, the LSO relied upon the DOE psychologist's conclusion that the individual's "inaccurate reports of his alcohol consumption, and his propensity to not take responsibility and blame others for his encounters with law enforcement, are personality traits/conditions which can impair his judgment, stability, reliability and trustworthiness." Ex. 1.

IV. Findings of Fact

I have carefully considered the totality of the record in reaching the findings of fact set forth below.

Following a June 2017 PSI, the individual was evaluated by a DOE consultant-psychologist in August 2017. Ex. 7. The evaluation noted that the individual was twice before ordered to undergo alcohol counseling, in 2005 and 2008, following alcohol-related arrests; however, the psychologist focused her questions to the individual on his alcohol use over the prior year. *Id.* at 3-4. The individual reported that he had last consumed alcohol in late May 2017, and he had last been intoxicated in mid-May. *Id.* at 3. The psychologist noted, however, that the individual's definition of intoxication "was not consistently applied by him for the purposes of considering himself intoxicated." *Id.* The evaluation stated that the individual described intoxication as both "reachable by drinking one beer" and "belligerent, can't walk." *Id.* The individual further explained that "drunk is falling down, intoxication is more than one beer." *Id.* According to the psychological evaluation, the individual described his alcohol consumption as "low to moderate, and on no regular basis but only at special occasions." *Id.*

The evaluation reported that, immediately following the August 31, 2017, clinical interview, the individual provided samples at a laboratory for three tests: Phosphatideylethanol (PEth), Ethyl Glucuronide (EtG), and Ethyl Sulfate (EtS). *Id.* at 5. Each of the tests showed positive results. *Id.* The evaluation explained that the positive results on the EtG and EtS tests indicated that the individual had consumed alcohol during the three days prior to the sample collection. *Id.* Furthermore, the positive PEth test provided “medical evidence that the [individual] ha[d] been drinking alcohol heavily on a regular basis.” *Id.* As such, the psychologist noted that the positive laboratory results contradicted the individual’s statement that he had not consumed alcohol since May of 2017. *Id.*

In analyzing the individual’s alcohol consumption, the psychologist noted that there were two “important factors” she considered: (1) the individual’s vagueness about how often and how much alcohol he consumes on a regular basis, and (2) the significant difference between his report of his alcohol consumption and the results of the three laboratory tests. *Id.* at 6. As a result, the psychologist opined that the individual was in denial, and she concluded that the individual’s alcohol consumption met the DSM-5 description of an Unspecified Alcohol-Related Disorder. *Id.*

Additionally, the psychologist noted that the individual “demonstrated lack of candor in providing reliable, truthful information when it could place him in a negative light.” *Id.* She reported that the individual demonstrated this lack of candor not only with regard to his alcohol consumption, but also with regard to his criminal conduct. *Id.* She noted that although at least five incidents in the individual’s criminal history were alcohol-related, the individual “denied that he was intoxicated at the time of any of his arrests other than the Aggravated DWI,” and he failed to take responsibility. *Id.* at 4-5. The psychologist concluded that the individual’s inaccurate reports of his alcohol consumption, along with his propensity to not take responsibility and blame others for his encounters with law enforcement, are “personality traits/conditions which can impair judgment, stability, reliability and trustworthiness.” *Id.* at 7.

In order to demonstrate adequate evidence of rehabilitation, the psychologist recommended that the individual abstain from alcohol for a period of not less than six months and attend alcohol rehabilitation counseling. *Id.* She recommended that the individual engage in a program such as Alcoholics Anonymous, which includes group counseling sessions, and that he attend weekly sessions, obtain a sponsor, and document his attendance. *Id.* She also recommended that the individual undergo at least two random PEth tests. *Id.* Should the individual choose reformation rather than rehabilitation, the psychologist recommended that the individual remain abstinent from alcohol for 12 months and undergo at least four PEth tests. *Id.* at 6-7. She stated that the individual’s inaccurate reporting and his propensity to not take responsibility and blame others should be addressed as part of the alcohol counseling. *Id.* at 7.

V. Analysis

I have thoroughly considered the record of this proceeding, including the submissions tendered in this case and the testimony of the witnesses presented at the hearing. In resolving the question of the individual’s eligibility for access authorization, I have been guided by the applicable factors

prescribed in 10 C.F.R. § 710.7(c) and the Adjudicative Guidelines. After due deliberation, I have determined that the individual has not sufficiently mitigated the security concerns noted by the LSO with regard to Guidelines E, G, or I. I cannot find that restoring the individual's DOE security clearance will not endanger the common defense and security, and is clearly consistent with the national interest. 10 C.F.R. § 710.27(a). Therefore, I have determined that the individual's security clearance should not be restored. The specific findings that I make in support of this decision are discussed below.

As an initial matter, I note that legitimate security concerns exist as a result of the DOE psychologist's evaluation and the individual's criminal history.

At the hearing, the individual testified on his own behalf and stated that the last time he consumed alcohol was New Year's Eve of 2018. Tr. at 72. He explained that he has engaged the help of the Employee Assistance Program (EAP) at his work site, and has attended ten sessions with the EAP Counselor, "several" of which were one-on-one counseling sessions. *Id.* at 91. The individual further explained that he has been attending both a traditional Alcoholics Anonymous (AA) program and a twelve-step program, similar to AA, since late January. *Id.* at 76, 90; Ex. B. When he cannot attend the twelve-step program during the week, he attends an AA meeting on the weekends. *Id.* at 90-91. He stated that he attends "once a week or sometimes twice." *Id.* The individual reported that he has self-identified as an alcoholic and that he has done so during every meeting of his twelve-step program. *Id.* at 75.

The individual acknowledged that he has not undergone any alcohol testing despite the recommendation of the DOE psychologist, and he additionally admitted that he had not been truthful with the DOE psychologist. *Id.* at 72, 74. He stated, "I do accept lying to her. I don't know the reason why I lied to her. Maybe just because [I was] embarrassed." *Id.* at 74. When questioned further about reasons for his minimization and lack of candor, he replied, "I don't know...I'm not perfect." *Id.* at 78. In order to ensure that his lack of candor with regard to alcohol consumption is not a concern in the future, the individual explained that he is "just taking it step by step, day by day, trying to...stay sober..." *Id.* at 82. When asked to describe his intentions regarding the use of alcohol in the future, the individual stated, "I'm going to try to do it as long as I can, but...there might be one family function down the road...that I decide to have...an alcoholic beverage. But at this time where I'm at now ...I plan on staying sober." *Id.* He further articulated that, "down the road," he may want to consume alcohol while engaging in outdoor activities, but "not until [he] get[s] everything resolved." *Id.* at 83.

With regard to his criminal history, the individual acknowledged that each of the five incidents listed on the LSO's summary of security concerns were true and accurate. *Id.* at 78-80.

The EAP Counselor appeared on the individual's behalf and testified that he has met with the individual for ten sessions, which included a combination of counseling and maintenance meetings. *Id.* at 29. The Counselor explained that the individual has not yet identified himself as an alcoholic, but is maintaining abstinence without any difficulty. *Id.* at 31. The individual reported to the Counselor that the last time he consumed alcohol was November of 2017. *Id.* at 30. The Counselor noted that the individual has been compliant with everything that was asked of him and has been forthright with regard to the amount of his alcohol consumption. *Id.* at 28. He opined that the

prognosis for the individual is “very good,” and stated that he did not have “any concerns about [the individual] being able to work in a safe and secure manner.” *Id.* at 29, 36.

The individual’s twelve-step program group leader also testified on his behalf. *Id.* at 61. The program leader stated that the individual reported that he last consumed alcohol around January of 2018. *Id.* at 66. The program leader noted that the individual is working on Step One of the twelve steps, which is the step in which a person “ha[s] to admit that [he or she is] an alcoholic and that [his or her] life has become unmanageable.” *Id.* at 69.

The individual also presented the testimony of five witnesses with whom he works, including his supervisor and two additional superiors. Tr. at 10, 16, 38, 50-51, 56. The witnesses all testified to the positive attributes of the individual’s character, including their impressions that he is honest, reliable, and trustworthy. *Id.* at 13, 19, 22, 52, 54, 57. None of the witnesses indicated that they have ever had a concern with regard to the individual’s alcohol usage or consumption. *Id.* at 13, 22, 54, 57.

The DOE psychologist testified last after hearing all of the testimony. In her evaluation, the psychologist found that the individual met the DSM-5 criteria for an unspecified alcohol-related disorder, and at the hearing she explained that this diagnosis is appropriate when there is “clear evidence that someone has...a problem with alcohol,” such that the person is consuming alcohol in quantities that could be causing physical damage. *Id.* at 101. The psychologist noted that the individual’s PEth and EtG tests provided objective, medical evidence that the individual has a “problem with alcohol.” *Id.* at 102. Further, the psychologist explained that her diagnosis is supported by the individual’s criminal history, which established a long-term pattern of alcohol related problems. *Id.* at 102-103.

The psychologist additionally explained that she had concerns about the individual’s candor. *Id.* at 99. She noted that the individual was dishonest with regard to his reported period of abstinence from alcohol, and that there were discrepancies between the individual’s reports regarding his criminal history versus other source reports. Ex. 7 at 5-6; Tr. at 99. The psychologist also explained that she was concerned that the individual did not feel intoxicated when he had blown a .16 on his breath alcohol content test. *Id.* at 100. She further explained that this concern related to the individual “being able to judge how affected he would be by the level of alcohol he had consumed.” *Id.*

Ultimately, the psychologist testified that she did not feel that the individual has been either rehabilitated or reformed. *Id.* at 107. She opined that the individual has a “fair prognosis,” but not a “good prognosis,” due to the limited period of time that he has been abstaining from alcohol. *Id.*

A. Guideline G

A diagnosis by a duly qualified medical or mental health professional (e.g., physician, clinical psychologist, psychiatrist, or licensed clinical social worker) of alcohol use disorder can raise security concerns and serve as a disqualifier to a security clearance. *See* Guideline G at ¶ 22(c). Furthermore, alcohol-related incidents away from work, such as driving while under the influence, fighting, disturbing the peace, or other incidents of concern, regardless of the frequency of the individual’s alcohol use or whether the individual has been diagnosed with an alcohol use disorder

can raise security concerns and disqualify an individual from having a security clearance. *See* Guideline G at ¶ 22(a). Under Guideline G, conditions that could mitigate security concerns include that “so much time has passed, or the behavior was so infrequent, or it happened under such unusual circumstances that it is unlikely to recur or does not cast doubt on the individual’s current reliability, trustworthiness, or judgment” or “the individual acknowledges his or her pattern of maladaptive alcohol use, provides evidence of actions taken to overcome this problem, and has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations.” *Id.* at ¶ 23 (a), (b).

Here, not only has the individual acknowledged the occurrence of numerous alcohol-related criminal incidents, but a clinical psychologist diagnosed the individual with an alcohol-related disorder without adequate evidence of reformation or rehabilitation. Ex. 7; Tr. 78-80. The psychologist stated that, in order to show adequate evidence of rehabilitation, the individual needed to abstain from alcohol for a period of at least six months and attend rehabilitation counseling. She recommended that he engage in weekly AA meetings with the support of a sponsor, and undergo random PEth tests. Ex. 7 at 6. In order to show adequate evidence of reformation, the individual needed to abstain from alcohol for 12 months and undergo random PEth tests. *Id.* at 6-7.

Although the individual has been abstaining from alcohol and has been attending a twelve-step program, the individual has not yet been abstinent from alcohol for a period of six months as recommended by the DOE psychologist. The individual has not undergone any PEth testing, and the record does not indicate that he has obtained the support of a sponsor in either his twelve-step program or in AA. In spite of the individual’s testimony to the contrary, both his twelve-step group leader and his EAP Counselor stated that the individual has not yet identified himself as an alcoholic. Furthermore, the individual testified that he will likely use alcohol in the future once these proceedings have ceased. As such I cannot find that the individual has acknowledged the problems with his alcohol use, demonstrated rehabilitation or reformation, or established that the alcohol-related criminal incidents that occurred are unlikely to recur. *See* Guideline G at ¶ 23 (a), (b).

In spite of the individual’s recent efforts to address the alcohol-related security concerns, due to the brevity of his abstinence thus far, I conclude that the security concerns under Guideline G have not been sufficiently mitigated.

B. Guideline E

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual’s reliability, trustworthiness, and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process. *See* Guideline E at ¶ 15. Deliberately providing false or misleading information, or concealing or omitting information concerning relevant facts to a competent medical or mental health professional involved in making a recommendation relevant to a national security eligibility determination, can disqualify an individual from holding an access authorization. *Id.* at ¶ 16 (b). Under Guideline E, conditions that may mitigate security concerns include that “the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt

on the individual's reliability, trustworthiness, or good judgment" or "the individual has acknowledged the behavior and obtained counseling to change the behavior . . . and such behavior is unlikely to recur." *Id.* at ¶ 17 (c), (d).

Here, the individual admitted that he provided false information to the DOE psychologist. Tr. at 74. In attempting to explain the dishonest answer, the individual stated that he was embarrassed and "not perfect." *Id.* at 74, 78. Although it is understandable that the individual may have been embarrassed to reveal such personal information, I cannot determine that the individual has mitigated this security concern.

Aside from the individual's dishonesty with regard to his alcohol consumption, the psychologist additionally noted discrepancies between the individual's retelling of his criminal history and the accounts of other sources. Ex. 7 at 5-6; Tr. At 99. Furthermore, during the hearing, there were several discrepancies between the testimony of the individual and the testimony of his witnesses. Specifically, the individual stated that he has acknowledged that he is an alcoholic and has done so in every one of his twelve-step meetings. Tr. at 75. However, both his group leader and his EAP Counselor specifically stated that the individual has not yet made this acknowledgement. *Id.* at 31, 70. Additionally, the individual's EAP Counselor testified that the individual reported that he last consumed alcohol in November 2017; however, the individual now asserts that he last consumed alcohol in January 2018. *Id.* at 30, 72. Given these inconsistencies, I cannot find that the individual's provision of false information occurred under unique circumstance, wherein it is unlikely to recur. Thus, I find that individual has not adequately addressed the security concerns under Guideline E. *See* Guideline E at ¶ 17(c).

C. Guideline I

Certain personality conditions can impair judgment, reliability, or trustworthiness. *See* Guideline I at ¶ 27. An opinion by a duly qualified mental health profession that an individual has a condition that may impair judgment, stability, or trustworthiness can serve as a disqualifying condition for a security clearance. *Id.* at ¶ 28(b). The relevant condition that could mitigate security concerns here includes that "there is no indication of a current problem." Guideline I at ¶ 29(e).

Here, the psychologist found that the individual inaccurately reported his alcohol consumption and had a propensity to avoid taking responsibility and blaming others for his encounters with law enforcement. Ex. 7 at 7. She concluded that this behavior constituted "personality traits/conditions which can impair his judgment, stability, reliability, and trustworthiness." *Id.* Further, she advised that "[t]hese issues...be addressed as part of the alcohol counseling." *Id.*

I find that the concerns with regard to the individual's personality traits are inextricably intertwined with his alcohol use. In light of the psychologist's testimony regarding the individual's progress and prognosis, along with my finding with regard to Guideline G, I cannot find that there is no indication of a current problem and that the psychologist's concerns about the individual's personality have been resolved. *See* Guideline I at ¶ 29(e).

VI. Conclusion

After considering all of the relevant information, favorable and unfavorable, in a comprehensive common-sense manner, including weighing all the testimony and other evidence presented at the

hearing, I have found that the individual has not yet brought forth sufficient evidence to resolve the security concerns associated with Guidelines E, G, or I. Accordingly, I have determined that the individual's access authorization should not be restored. The parties may seek review of this Decision by an Appeal Panel under the regulations set forth at 10 C.F.R. § 710.28.

Kimberly Jenkins-Chapman
Administrative Judge
Office of Hearings and Appeals